

PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)  
 PRICE AND ASSOCIATES  
 A Professional Law Corporation  
 The Latham Square Building  
 1611 Telegraph Avenue, Suite 1450  
 Oakland, CA 94612  
 Telephone: (510) 452-0292  
 Facsimile: (510) 452-5625  
 Attorneys for Plaintiff  
 M. HOPE YOUNG

SCOTT N. SCHOOLS (S.C.BN 9990)  
 United States Attorney  
 JOANN M. SWANSON (SBN 88143)  
 Chief, Civil Division  
 JONATHAN U. LEE (SBN 148792)  
 Assistant United States Attorney  
 450 Golden Gate Avenue, Ninth Floor  
 San Francisco, California 94102  
 Telephone: (415) 436-6909  
 Facsimile: (415) 436-6748  
 Email: jonathan.lee@usdoj.gov  
 Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

M. HOPE YOUNG,  
 Plaintiff,  
 v.  
 ALPHONSO JACKSON, SECRETARY OF  
 THE DEPARTMENT OF HOUSING AND  
 URBAN DEVELOPMENT; FAYE  
 AUSTIN; MARC ROTHBERG; AND  
 GEORGE WEIDENFELLER,  
 Defendants.

No. C 07-2413 JSW

**JOINT CASE MANAGEMENT  
 STATEMENT AND PROPOSED  
 ORDER**

Date: December 21, 2007  
 Time: 1:30 p.m.  
 Place: Courtroom 2, 17<sup>th</sup> Floor  
 450 Golden Gate Avenue  
 San Francisco, CA  
 Judge: Hon. Jeffrey S. White

1 According to Northern District Civil Local Rule 16-9, requiring counsel to file a Joint Case  
2 Management Statement addressing all of the topics set forth in the Standing Order for All Judges  
3 of the Northern District of California – Contents of Joint Case Management Statement, dated  
4 March 1, 2007, the parties through their counsel of record file the following Joint Case  
5 Management Statement:

6 1. Jurisdiction and Service

7 The Court has jurisdiction under Title VII of the Civil Rights Act of 1964. The parties are  
8 plaintiff M. Hope Young and defendant Secretary of Housing and Urban Development. The  
9 defendant has been served.

10 2. Relevant Facts

11 Plaintiff: Plaintiff M. Hope Young has been employed as an attorney in the Office of  
12 Counsel of the Dept. of Housing and Urban Development since 1992, specializing in fair  
13 housing. She is currently employed as an Attorney/GS-14. In March 2004, Regional Counsel  
14 Faye Austin and Deputy General Counsel George Weidenfeller made a decision to fill a  
15 supervisory position through a voluntary reassignment process, bypassing the requirements of a  
16 vacancy announcement and the normal promotional process. Plaintiff contends that this decision  
17 was made to preclude her from being considered for this promotional opportunity based upon her  
18 race (African-American) and gender (female), and that the reassignment selection process was  
19 used to ensure the selection and subsequent promotion of Marc Rothberg, a Caucasian male.

20 On May 11, 2004, Ms. Young filed a formal EEO Complaint of Discrimination. She  
21 amended her initial EEO Complaint on October 7, 2004. Immediately following the filing of this  
22 Complaint, Ms. Young alleges that Messrs. Rothberg and Weidenfeller and Ms. Austin engaged  
23 in a course of conduct intended to harass and intimidate Ms. Young, and created a hostile work  
24 environment for her in retaliation for her EEO complaint. Ms. Young alleges that since May  
25 2004 up until the present day, supervisors Rothberg and Austin have, *inter alia*, falsely accused  
26 her of (a) failing to perform assignments, (b) neglecting her duties and (c) arriving late to work;  
27 hired and instructed her co-workers to spy on her; unfairly placed on a Performance Improvement  
28 Plan; denied her the benefits of long-accepted attendance practices with respect to teleworking,

1 bereavement leave, and participation in HUD's credit-hour program; set timelines and deadlines  
2 that were unreasonable or impossible for her to meet or comply with; began to monitor her daily  
3 arrival and departure times at work; and singled her out for punishment while ignoring the late  
4 arrival and early departure times of other similarly situated employees, including attorney Kim  
5 Marlia, a Caucasian male.

6 More recently, these supervisors have denied her requests for reasonable accommodation  
7 based upon her disability, subjected her to disciplinary actions, modified her work assignments,  
8 and issued her an unfavorable performance evaluation. On November 23, 2007, Ms. Young filed  
9 a subsequent EEO Complaint for disability discrimination which is pending. She intends to  
10 amend this action to include the claims arising from Defendant's continuing retaliation.

11 Defendant: This is an employment discrimination lawsuit filed by Melissa Hope Young, who  
12 is a GS-14 Attorney-Advisor in the Region IX Office of Counsel of the Department of Housing  
13 and Urban Development ("HUD") in San Francisco, California. Plaintiff named Alphonso  
14 Jackson, Secretary of HUD, in his official capacity. Plaintiff alleges that HUD discriminated  
15 against her due to her race (African-American) and her sex (female), and reprisal for prior equal  
16 employment opportunity activity. She alleges, inter alia: (1) she was passed over for a  
17 reassignment to a supervisory position in the Region IX office, (2) she was subsequently harassed  
18 and retaliated against for prior EEO activity when her supervisor i) suspended her participation in  
19 the Credit Hour Program, ii) disapproved various requests to work credit hours, iii) placed her on  
20 a Performance Improvement Plan, iv) accused her of failing to complete assignments timely, v)  
21 repeatedly accused her of tardiness, and vi) prohibited her from using bereavement leave.

22 Defendant denies there was any discrimination or retaliation against plaintiff.

23 Regarding the supervisory position, this was a voluntary reassignment, not an announced  
24 vacancy. Defendant considered but did not select plaintiff for the reassignment to the  
25 supervisory position because she was not the most experienced candidate, had a poor attendance  
26 history, and was not complete in her work product.

27 Regarding plaintiff's credit hour program claim, defendant approved plaintiff's Credit Hour  
28 program requests when appropriate and warranted by her work load. At times, her requests were

1 not warranted or appropriate and in those instances defendant did not approve plaintiff's request.

2 Regarding the performance improvement plan claim, defendant contends that it instituted a  
3 performance improvement plan because plaintiff's performance needed improvement. After  
4 plaintiff provided work status reports and prioritized her work load appropriately, and after  
5 weekly meetings with her supervisor to implement the plan, plaintiff's performance improved  
6 and she was removed from the PIP.

7 As for plaintiff's failure to complete assignments timely, this fact was documented and  
8 addressed in the performance improvement plan.

9 Regarding the tardiness claim, plaintiff has been habitually tardy in appearing to work during  
10 approved hours. This is documented and has been addressed directly with plaintiff.

11 Regarding plaintiff's bereavement leave claim, plaintiff provided a leave slip on March 3,  
12 2005 indicating one half hour of bereavement leave the previous day for "death in the family."  
13 Plaintiff's supervisor requested that she provide the required information, including the name and  
14 relationship of the family member. When plaintiff provided this information, within a few days,  
15 the supervisor approved the bereavement leave request.

### 16 3. Legal Issues

#### 17 Defendants:

- 18 I. Discrimination: Can plaintiff establish the prima facie elements of racial  
19 discrimination by showing disparate treatment, namely that she was "singled out  
20 and treated less favorably than others similarly situated on account of race or any  
21 other criterion impermissible under [Title VII]?" Gay v. Waiters' and Dairy  
22 Lunchmen's Union, Local No. 30, 694 F.2d 531, 537 (9th Cir. 1982); McDonnell  
23 Douglas Corp. v. Green, 411 U.S. 792, 802, 803 (1973).
- 24 II. Discrimination: Can the defendant articulate a legitimate nondiscriminatory  
25 reason for the alleged adverse employment actions?
- 26 III. Discrimination: Once the defendant carries this burden, will plaintiff be able to  
27 demonstrate that the "'assigned reason' was 'a pretext or discriminatory in its  
28 application.'" Lynn v. Regents of the Univ. of California, 656 F.2d 1337, 1341

(9th Cir. 1981) (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 807 (1973)).

IV. Retaliation: Will plaintiff be able to carry her burden to show that: (1) she engaged in a protected activity; (2) she suffered an adverse employment decision; and (3) there was a causal link between the protected activity and the adverse employment decision. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1064 (9<sup>th</sup> Cir. 2002).

V. Retaliation: If the plaintiff establishes a prima facie case of retaliation, will defendant be able to carry its burden to articulate a legitimate, non-retaliatory explanation for the adverse employment action. See Winarto v. Toshiba America Electronics Components, Inc., 274 F.3d 1276, 1284 (9<sup>th</sup> Cir. 2001).

VI. Retaliation: If the employer rebuts the inference of retaliation, the burden shifts back to the plaintiff to show that the defendant's explanation is merely a pretext for impermissible retaliation. See Brooks v. San Mateo, 229 F.3d 917, 928 (9<sup>th</sup> Cir. 2000).

VII. Nature and scope of damages, if any.

PLAINTIFF:

a. Whether Ms. Young's race or gender activity was a motivating factor in Defendant's decision not to promote her in January 2004. (*Stegall v. Citadel Broadcasting Co.*, 350 F.3d 1061, 1067 (9<sup>th</sup> Cir. 2003), citing *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 856-57 (9<sup>th</sup> Cir. 2002), *affirmed*, *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003); *see also McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1122-1123 (9<sup>th</sup> Cir. 2004).)

b. Whether Ms. Young was targeted for discrimination or harassment because of her membership in two protected groups: that of a racial minority and female. (*Lam v. University of Hawaii*, 40 F.3d 1551, 1561-1562 (9<sup>th</sup> Cir. 1994).)

c. Whether Ms. Young was subjected to persistent and ongoing harassment that was sufficiently severe to change the terms and conditions of her employment. (*Meritor Sav. Bank v.*

1 *Vinson* (1986) 477 U.S. 57, 66-67, 106 S.Ct. 2399, 2404-2405, 91 L.Ed.2d 49; *Draper v. Coeur*  
 2 *Rochester, Inc.*, 147 F.3d 1104, 1107-1109 (9<sup>th</sup> Cir. 1998).)

3 d. Whether the cumulative effect of numerous discrete acts polluted Ms. Young's  
 4 work environment and created a hostile work environment. (*Morgan v. Amtrak*, 232 F.3d 1008,  
 5 1017 (9<sup>th</sup> Cir. 2000), *affirmed in part, reversed in part*; *National Passenger Railroad Corp. v.*  
 6 *Morgan* (2002) 536 U.S. 101, 115, 122 S.Ct. 2061, 2072, 153 L.Ed.2d 106); *Porter v. CDC*, 419  
 7 F.3d 885, 891 (9<sup>th</sup> Cir. 2005) (*as amended* August 5, 2005); *Oncale v. Sundowner Offshore*  
 8 *Services, Inc.* (1998) 523 U.S. 75, 81-82, 118 S.Ct. 998, 1003, 140 L.Ed.2d 201).)

9 4. Motions

10 Defendants: The parties anticipate that motions for summary judgment will be filed and  
 11 hereby request a hearing date be assigned at this conference, if possible.

12 5. Amendment to the Pleadings

13 Defendant: None anticipated.

14 Plaintiff: Plaintiff has additional claims for retaliation and other discriminatory acts that  
 15 have occurred since the filing of this action. Subject to the exhaustion of any additional  
 16 administrative requirements, plaintiff will seek leave to amend this complaint.

17 6. Evidence Preservation

18 Defendants: The Federal Defendant has secured all e-mail activity on the HUD e-mail  
 19 accounts of the following persons: defendants Weidenfeller, Austin, and Rothberg and plaintiff.  
 20 Defendant requests that plaintiff take all appropriate measures to preserve evidence, including  
 21 electronically stored data, exclusively within her possession, care, custody or control.

22 7. Disclosures

23 The parties have agreed to exchange of Rule 26 disclosures within 14 days of the Case  
 24 Management Conference.

25 8. Discovery

26 The parties have met and conferred and make the following proposal.

27 A) Depositions: Plaintiff believes she'll need to seek leave to take 20-25 depositions.

28 Defendant will seek leave to take 10 depositions. These will include:

- 1) Plaintiff – all aspects of the claims
- 2) Fernandez-Pifer, Rosemarie – HUD co-worker identified by plaintiff as having knowledge of discrimination against plaintiff in the 2004 supervisor selection
- 3) Hill, Tyrone – – former HUD co-worker identified by plaintiff as having knowledge of discrimination against plaintiff in the 2004 supervisor selection, as well as additional instances of discrimination, retaliation, etc.
- 4) Kilibarda, Hana – former HUD co-worker identified by plaintiff as having knowledge of discrimination against plaintiff in the 2004 supervisor selection
- 5) Lee, Ji – HUD intern with knowledge of plaintiff’s work place relationships in general and with Mr. Rothberg specifically including several episodes of alleged discrimination, etc.
- 6) Lui, Josephine – HUD paralegal with knowledge of plaintiff’s work place relationships in general and with Mr. Rothberg specifically including several episodes of alleged discrimination, etc. and plaintiff’s attendance patterns
- 7) Marlia, Kim – HUD attorney and co-worker with knowledge of plaintiff’s claims generally and knowledge of plaintiff’s attendance and related performance and disciplinary issues
- 8) Murakami, Dennis – plaintiff’s former supervisor, who plaintiff identifies as a witness to the qualifications of plaintiff and the selectee Mr. Rothberg for the nonselection claim
- 9-10) Plaintiff’s medical care providers (2) yet to be identified

Plaintiff’s list of deponents includes all of the foregoing lay witnesses listed by defendants.

With respect to Nos. 2, 4, 7 & 8 (Rosemarie Fernandez-Pifer, Hana Kilibarda,

1 Kim Marlia and Dennis Murakami), in addition to the topics listed by defendants,  
2 Plaintiff believes they have knowledge of the continuing incidents of retaliation  
3 and harassment and the hostile environment for Plaintiff.

4  
5 With respect to Kim Marlia, Plaintiff believes that he will also testify to the  
6 disparate treatment of Plaintiff with respect to attendance practices and daily  
7 arrival and departure times.

8 9) Linda Cruciani - HUD Attorney with knowledge of Plaintiff's work  
9 assignments in 2004 and continuing acts of retaliation and discrimination  
10 from then until 2007

11 10) Victor Wilson - HUD employee hired and assigned specifically to monitor  
12 Plaintiff's presence and activities in the workplace with directions to  
13 report back to Plaintiff's supervisors

14 11) Sam Hutchinson - HUD Attorney with knowledge of continuing acts of  
15 retaliation and discrimination from 2004 up to 2007

16 12) Richard Thomas - similarly situated Caucasian male attorney who was  
17 treated differently with respect to attendance and commuting practices.

18 13) Naomi de la Mora - HUD Attorney with knowledge of Plaintiff's work  
19 assignments in 2004 and acts of retaliation and discrimination against  
20 Plaintiff

21 B) Written Discovery: Defendant to serve requests for production of documents,  
22 interrogatories and requests for admission on or before January 31, 2008, to cover  
23 the subjects of evidence to support or relating to the plaintiff's liability  
24 contentions, plaintiff's statements, treatment received for plaintiff's physical and  
25 emotional injuries, and any other claim of damages.

26  
27 Plaintiff intends to serve written interrogatories, requests for admissions and  
28 requests for production of documents regarding the bases for her non-selection for

1 the supervisory position, the decision to fill the position by a voluntary  
2 reassignment in lieu of the promotional process utilized for the same position in  
3 all of the other regions, the bases for the various decisions made regarding  
4 Plaintiff's work assignments, denial of teleworking requests, denial of  
5 bereavement leave, suspension of credit-hour participation, monitoring of her  
6 attendance, and criticism of her work performance, including but not limited to  
7 the issuance of a performance improvement plan.

8 C) Rule 35 examinations – Plaintiff has placed her physical and mental health in  
9 issue by her allegations and therefore Defendant requests an order permitting two  
10 examinations by independent experts.

11 9. Class Actions

12 Not applicable.

13 10. Related Cases

14 None known.

15 11. Relief Sought

16 Plaintiff's complaint seeks general and compensatory damages, medical expenses and  
17 related expenses, loss of earnings and earning capacity, costs of suit, attorneys fees,  
18 injunctive relief, and other relief the Court deems just and proper.

19 12. Settlement and ADR

20 The parties agree to mediation through the Court's ADR department. Defendant requests  
21 that it be timed to take place after the completed deposition of the plaintiff. Plaintiff  
22 requests either that the mediation take place in accordance with the early timing normally  
23 set by the ADR department or that if it is going to take place after discovery commences  
24 than plaintiff requests an opportunity to conduct discovery as well. Furthermore, plaintiff  
25 requests that if the Court chooses to delay ADR pending discovery then plaintiff requests  
26 that each party be limited to one 7 hour deposition before mediation.

27 13. Consent to Magistrate Judge For All Purposes

28 The parties do not consent.

14. Other References

None at this time.

15. Narrowing of Issues

The motions described above may limit or narrow issues before trial.

16. Expedited Schedule

None suggested.

17. Scheduling

Trial: November 17, 2008

Pretrial Conference: October 24, 2008

Dispositive motion filing deadline: June 27, 2008

Dispositive motion hearing: August 1, 2008

Fact discovery cut off: April 21, 2008

Expert disclosure and Rule 26 reports: August 8, 2008

Settlement Conference (if summary judgment denied): September 2008

The parties propose the foregoing schedule after discussion of their pre-existing trial commitments and vacation schedules.

18. Trial

Defendant anticipates the trial length is 1.5 to 2 weeks. Plaintiff estimates a trial length of three to five weeks. Proposed trial date is November 17, 2008.

19. Disclosure of Non-Party Interested Entities or Persons

Federal Defendant believes they are exempt from this requirement because they are federal governmental entities or federal officers. Plaintiff is not aware of any.

20. Such Other Matters As May Facilitate Just, Speedy and Inexpensive Resolution

Plaintiff to provide at the time of the initial disclosures a complete list of medical care providers from January 1, 2004 to the present and a signed authorization to release medical records, including the provisions of HIPAA, in light of her prayer for damages alleging medical expenses. Defendant to provide at the time of the initial disclosure an identification of contemporaneous evidence, if any, relied upon by former defendants

Austin and Weidenfeller for plaintiff's nonselection for the supervisory position.

DATED: December 14, 2007

LAW OFFICES OF PAMELA Y. PRICE

/s/  
PAMELA Y. PRICE  
Attorneys for M. Hope Young

DATED: December 14, 2007

SCOTT N. SCHOOLS  
United States Attorney

/s/  
JONATHAN U. LEE  
Assistant United States Attorney  
Attorneys for the United States of America

**PROPOSED ORDER**

IT IS SO ORDERED.

Dated: December \_\_, 2007

Hon. Jeffrey S. White  
UNITED STATES DISTRICT JUDGE